

# HOUSE BILL No. 4246

February 25, 2015, Introduced by Rep. Farrington and referred to the Committee on Regulatory Reform.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending section 32 (MCL 24.232), as amended by 2011 PA 270.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 32. (1) Definitions of words and phrases and rules of  
2 construction prescribed in any statute that are made applicable to  
3 all statutes of this state also apply to rules unless clearly  
4 indicated to the contrary.

5           (2) A rule or exception to a rule ~~shall~~**MUST** not discriminate  
6 in favor of or against any person. A person affected by a rule is  
7 entitled to the same benefits as any other person under the same or  
8 similar circumstances.

9           (3) The violation of a rule is a crime ~~when so~~**IF** provided by

1 statute. ~~A UNLESS PROVIDED BY STATUTE, A~~ rule ~~shall~~ **MUST** not make  
2 **DESIGNATE** an act or omission ~~to act~~ **AS** a crime or prescribe a  
3 criminal penalty for violation of a rule.

4 (4) An agency may adopt ~~by~~ reference in its rules and  
5 without publishing the adopted matter in full ~~all~~ or any part of  
6 a code, standard, or regulation that has been adopted by an agency  
7 of the United States or by a nationally recognized organization or  
8 association. The reference ~~shall~~ **MUST** fully identify the adopted  
9 matter by date and otherwise. The reference ~~shall~~ **MUST** not cover  
10 any later amendments and editions of the adopted matter, but if the  
11 agency wishes to incorporate them in its rule, it shall ~~amend~~ **DO SO**  
12 **BY AMENDING** the rule or ~~promulgate~~ **PROMULGATING** a new rule.  
13 ~~therefor.~~ The agency shall have available copies of the adopted  
14 matter for inspection and distribution to the public at cost and  
15 the rules ~~shall~~ **MUST** state where copies of the adopted matter are  
16 available from the agency and the agency of the United States or  
17 the national organization or association and the cost of a copy as  
18 of the time the rule is adopted.

19 (5) A guideline, operational memorandum, bulletin,  
20 interpretive statement, or form with instructions is not  
21 enforceable by an agency, is considered merely advisory, and ~~shall~~  
22 **MUST** not be given the force and effect of law. An agency shall not  
23 rely upon a guideline, operational memorandum, bulletin,  
24 interpretive statement, or form with instructions to support the  
25 agency's decision to act or refuse to act if that decision is  
26 subject to judicial review. A court shall not rely upon a  
27 guideline, operational memorandum, bulletin, interpretive

1 statement, or form with instructions to uphold an agency decision  
2 to act or refuse to act.

3 (6) ~~Where~~ **IF** a statute provides that an agency may proceed by  
4 rule-making or by order and an agency proceeds by order in lieu of  
5 rule-making, the **AGENCY SHALL NOT GIVE THE** order ~~shall not be given~~  
6 general applicability to persons who were not parties to the  
7 proceeding or contested case before the issuance of the order,  
8 unless the order was issued after public notice and a public  
9 hearing.

10 (7) A rule ~~shall~~ **MUST** not exceed the rule-making delegation  
11 contained in the statute authorizing the rule-making.

12 (8) **EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**  
13 **IF THE FEDERAL GOVERNMENT HAS MANDATED THAT THIS STATE PROMULGATE**  
14 **RULES, AFTER DECEMBER 31, 2018, AN AGENCY SHALL NOT PROMULGATE OR**  
15 **ADOPT A RULE MORE STRINGENT THAN THE APPLICABLE FEDERALLY MANDATED**  
16 **STANDARD UNLESS SPECIFICALLY AUTHORIZED BY A STATUTE OF THIS STATE.**

17 (9) **EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**  
18 **IF THE FEDERAL GOVERNMENT HAS NOT MANDATED THAT THIS STATE**  
19 **PROMULGATE RULES, AFTER DECEMBER 31, 2018, AN AGENCY SHALL NOT**  
20 **PROMULGATE OR ADOPT A RULE MORE STRINGENT THAN THE APPLICABLE**  
21 **FEDERAL STANDARD UNLESS SPECIFICALLY AUTHORIZED BY A STATUTE OF**  
22 **THIS STATE.**

23 Enacting section 1. This amendatory act takes effect January  
24 1, 2019.